Testimony of
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Senator Grassley, Senator Breaux, Committee members, thank you for inviting us to discuss the need to strengthen assurances that Americans in nursing homes receive high quality care and are treated with dignity and compassion. Clearly, intolerable situations have occurred, and our most vulnerable citizens have suffered.

As the President announced last week, we are taking strong new steps to address what both our own Report to Congress and the General Accounting Office investigation make clear is a serious problem. We can and we will implement many of these new actions on our own now. We also need Congress to give us legislative authority for some additional provisions that will help ensure that we can meet our obligation to protect the very vulnerable Americans who need nursing home care. We want to work with you to make sure that all of these important steps are taken quickly and effectively.

Since 1995, the Administration has been enforcing the toughest nursing home regulations in the history of the Medicare and Medicaid programs. Working with states, who have the primary responsibility for conducting on-site inspections and recommending sanctions, we have sharply increased the number of penalties levied on poor-quality nursing homes. Our new Report to Congress notes improvements in the quality of care delivered in nursing homes as a result of these new regulations. But the report also finds a need for further improvement by states, nursing homes, the federal government, and others.

In our new initiative, we will:

- work with states to improve their nursing home inspection systems;
- crack down on nursing homes that repeatedly violate safety rules;
- require criminal background checks on all new nursing home employees;
- focus on reducing the incidence of bed sores, dehydration, and malnutrition; and
- publish nursing home quality ratings on the Internet.

BACKGROUND

About 1.6 million elderly and disabled people receive care in approximately 16,800 nursing homes across the United States. The federal government, through the Medicare and Medicaid programs, provides funding to the states to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those homes that are violating health and safety rules. Since 1995, we have had authority to levy harsher penalties on nursing homes found out of compliance with those rules.

That authority was granted to us through the Omnibus Budget Reconciliation Act of 1987, which reformed the way states and the federal government oversee nursing homes and protect the health of residents. The legislation established new standards for quality, a set of resident rights, a new system to assess the quality of nursing home residents' lives, and a new survey mechanism focused on patient outcomes. The law also created new staffing requirements for licensed nurses and new training requirements for nursing assistants and others. And it established new, more flexible enforcement rules and penalties to help identify and punish nursing homes that violate the new rules. On July 1, 1995, the

Clinton Administration published new regulations implementing key provisions of the law. Under these regulations, the number of civil monetary penalties rose from zero in 1994 to 430 in FY 1997.

The enforcement system under these regulations focused on giving facilities a chance to correct problems and avoid sanctions. There are many instances in which better care has been the result. However, even when sanctions have been imposed, facilities with serious problems often improve only temporarily, and subsequent surveys find residents in real danger once again.

EVIDENCE OF IMPROVEMENT

According to the new Report to Congress, there is clear evidence that the new regulations are improving the health and safety of nursing home residents. Specifically:

- overuse of anti-psychotics is down. Before reforms were implemented, about 33 percent of residents were receiving these drugs, now just 16 percent are;
- appropriate use of antidepressants is up. Before reforms were implemented, just 12.6 percent of residents were receiving these drugs, now 24.9 percent are;
- use of physical restraints is down, from about 38 percent to under 15 percent;
- use of in dwelling urinary catheters is down nearly 30 percent; and
- the number of residents with hearing problems who receive hearing aids is up 30 percent.

NEED FOR FURTHER ACTION

Despite these improvements attributable to the new regulations, the Report to Congress makes clear that several areas require greater attention.

- State-run nursing home inspections are too predictable. Inspection teams frequently appear on Monday mornings and rarely visit on weekends or during evening hours. This allows nursing homes to prepare for inspections.
- Several states have rarely cited nursing homes for substandard care, an indication that their inspections and enforcement may be inadequate.
- Nursing home residents continue to suffer unnecessarily from such clinical problems as bedsores (decubitus ulcers), malnutrition, and dehydration, which are easily prevented.
- Residents continue to experience physical and verbal abuse, neglect, and misappropriation of their property.

NEW ENFORCEMENT ACTIONS

Because of these continuing problems, we are adding new enforcement tools and strengthening federal oversight of nursing home quality and safety standards. Resource needs for these activities are reflected in the fiscal year 1999 budget request currently before the Congress. Our strategy includes several administrative actions that we will implement now using our existing authority. It also includes additional steps that require new legislative authority from Congress.

Our administrative steps will target states with weak inspections. As President Clinton said last week, "If state enforcement agencies don't do enough to monitor nursing home quality, we will cut off their contracts and find someone else who will do the job right."

We will establish tougher inspections everywhere, focus on easily preventable problems like bed sores and malnutrition, combat resident abuse, increase prosecution of egregious violations, publish survey results on the Internet, and continue development of our automated data system to better identify problems and improve quality.

Target States with Weak Inspection Systems.

- We will provide additional training and other assistance to inspectors in states that are not adequately protecting residents.

- We will enhance federal review of the surveys conducted by the states. Standard evaluation protocols will be implemented in every state this fall.

- We will ensure that state surveyors adhere to HCFA's policy to sanction nursing homes with serious violations and prohibit sanctions from being lifted until after an onsite visit has verified compliance.

- We will terminate federal funding for nursing home surveys for states that fail to adequately perform survey functions or fail to improve inadequate survey systems, and instead contract with other entities to conduct nursing home survey and certification activities in those states.

Tougher Nursing Home Inspections.

- We will impose sanctions without a "grace period" for second offenses involving violations that harm residents; until now even serious repeat offenders have been given a chance to correct problems and avoid penalties.

- We will not lift sanctions for serious violations until state inspectors conduct an on-site visit to verify that the problem is fixed.

- We will have state surveyors conduct inspections more often for repeat offenders with serious violations, without decreasing inspection frequency for other facilities.

- We will have state surveyors stagger survey times for all facilities, with a set amount to be done on weekends and evenings.

- We will focus on nursing home chains that have a record of noncompliance with federal rules.

Preventing Bed Sores, Dehydration, and Malnutrition.

- We will step up review of nursing homes' performance in preventing bed sores, dehydration, and malnutrition by increasing resident case reviews in these specific areas during the survey.

- We will sanction nursing homes with patterns of violations.

- We will develop a repository of best practice guidelines for residents at risk of weight loss and dehydration with the Administration on Aging, the American Dietitians Association, clinicians, consumers, and nursing homes.

Combating Resident Abuse.

- We will have state inspectors review each nursing home's system to prevent, identify, and stop physical or verbal abuse, neglect, and misappropriation of resident property.

- We will share information about each nursing home's performance in this area with residents and their families.

- We will recommend that nursing homes inquire about criminal convictions when interviewing applicants for employment.

Prosecution of Egregious Violations

- We will work with the HHS Inspector General and the Department of Justice to ensure that state survey agencies and others refer appropriate cases to DOJ and/or the OIG where appropriate, for prosecution under federal civil and criminal statutes, particularly cases that result in harm to individual patients.

- We will work with the HHS Inspector General to conduct training for and provide technical assistance to federal survey and certification staff and HCFA contractors on how to make appropriate referrals of such cases to the Inspector General.

Publishing Survey Results on the Internet.

- We will post individual nursing home survey results and violation records on the Internet to increase accountability and flag repeat offenders, as well as superior performers, for both families and the public.

Continuing Development of Minimum Data Sets.

- We will continue development of our national automated data system for information on resident care. We began collecting information on what is known as a Minimum Data Set in June 1998.

- We will analyze this information over time to identify potential areas of unacceptable care in nursing homes, and use it to assess nursing home performance in such areas as avoidable bed sores, loss of mobility, weight loss and use of restraints.

- We will use these assessments to better identify nursing homes for immediate onsite inspections, detect and correct systematic problems early, and improve nursing home quality.

NEW LEGISLATIVE ACTIONS

In addition to the administrative steps described above, we are asking Congress to provide needed authority for several additional actions to help improve nursing home care and safety.

Criminal Background Checks. We need authority to establish a national registry of nursing home

employees convicted of abusing residents and to require criminal background checks on all newly hired personnel.

Nutrition and Hydration Therapy. We need to Abe able to allow more types of nursing home employees, with proper training, to perform crucial nutrition and hydration functions.

PENDING LEGISLATION

Nursing Home Ombudsman Program. We need Congress to reauthorize a strong nursing home ombudsman program through the U.S. Administration on Aging. Ombudsmen are an excellent source of information about poor-quality nursing homes and abuse or neglect of patients.

User Fees. We need authority, as requested in our FY 1999 budget proposal, to collect a fee from Medicare providers and suppliers requesting participation in Medicare both for initial surveys and for recertification surveys. Fee amounts will reflect the unit cost of a survey and the costs incurred by both state and the federal government to administer the program, The amounts will vary by state, since survey costs vary by state. The fees will be credited to our program management appropriation, with fees for initial surveys paid by each nursing homes when it is surveyed, and fees for recertifications deducted from payments to the nursing home.

PUBLIC VS. PRIVATE ACCREDITATION

Finally, at Congress' request, we also evaluated how private accreditation of nursing homes compares to the current system. We secured an independent evaluation by Abt Associates to assist in that portion of the report. The report concludes that the private Joint Commission on Accreditation of Healthcare Organizations (JCAHO) survey process is not effective in protecting nursing home residents. JCAHO surveys focuses on structure and process measures, not on whether residents actually get appropriate care. JCAHO surveyors repeatedly miss instances where residents suffer actual harm because of inadequate care. In more than half of 179 cases where both HCFA and JCAHO conducted inspections of the same nursing homes, JCAHO failed to detect serious problems identified by HCFA. Also, the public does not have access to JCAHO survey findings. According to Abt Associates, granting "deeming" authority to JCAHO would place nursing home residents at serious risk. While we have concluded in this report that JCAHO's current approach to the survey process is unacceptable, we would be willing to consider a public/private partnership that would help us target our survey and enforcement efforts on poor performers.

CONCLUSION

We have made some progress in addressing the deplorable conditions and heart wrenching human consequences in America's nursing homes, but clearly we must do more to assure that Americans in nursing homes receive high quality care and are treated with dignity and compassion. The parallel findings of our Report to Congress and General Accounting Office investigation are a clear call to action. Testimony at this hearing underscores the urgency to act now. We must and we will address weaknesses in state survey and enforcement activities. We will strengthen federal oversight. And we will work with Congress to secure authority for additional steps needed to ensure that we at HCFA meet our responsibility for ensuring the quality of nursing home care.